

82-1356
No.

Office-Supreme Court, U.S.
FILED

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

LEON STEVAS,
CLERK

OPE SHIPPING, LTD.,

Cross Petitioner,

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES
FIDELITY & GUARANTY COMPANIES, INC., VARIOUS
BRITISH UNDERWRITERS AND UNDERWRITERS AT
LLOYDS,

Cross Respondents.

VADOR SHIPPING, LTD.,

Cross Petitioner,

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES
FIDELITY & GUARANTY COMPANIES, INC., VARIOUS
BRITISH UNDERWRITERS AND UNDERWRITERS AT
LLOYDS,

Cross Respondents.

AGUA SHIPPING, LTD.,

Cross Petitioner,

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES
FIDELITY & GUARANTY COMPANIES, INC., VARIOUS
BRITISH UNDERWRITERS AND UNDERWRITERS AT
LLOYDS,

Cross Respondents.

DURAS SHIPPING, LTD.,

Cross Petitioner,

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES
FIDELITY & GUARANTY COMPANIES, INC., VARIOUS
BRITISH UNDERWRITERS AND UNDERWRITERS AT
LLOYDS,

Cross Respondents.

**CONDITIONAL CROSS PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT**

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Question Presented

Whether loss of the cross petitioners' four commercial ocean going vessels was covered by the policy of marine insurance issued by cross respondents, ALLSTATE INSURANCE COMPANY, INC., UNITED STATES FIDELITY & GUARANTY COMPANIES, INC., and VARIOUS BRITISH UNDERWRITERS, ("MARINE RISK INSURERS").

LIST OF ALL PARTIES

The following are all of the parties to the appeal to the United States Court of Appeals for the Second Circuit:

Plaintiffs-Appellants

OPE SHIPPING, LTD., EL PORVENIR SHIPPING COMPANY, INC.
 VADOR SHIPPING, LTD., CIA. DE NAVEGACION LA LIBERTAD, S.A.
 AGUA SHIPPING, LTD., CIA. DE NAVEGACION CORINTO, S.A.
 DURAS SHIPPING, LTD., MARINA MERCANTE NICARGUENSE, S.A.

Defendants-Appellees (Marine Risk Underwriters)

ALLSTATE INSURANCE COMPANY, INC.
 UNITED STATES FIDELITY & GUARANTY COMPANIES, INC.
 VARIOUS BRITISH UNDERWRITERS (Stipulated in the district court to mean John Joseph Taylor and all other UNDERWRITERS AT LLOYD'S SUBSCRIBING POLICIES OF INSURANCE NOS. 01/145002 AND 01/145003 THROUGH MESSRS. ROBT. BRADFORD HOBBS SAVILL, LTD.)

Defendants-Appellees (War Risk Underwriters)

UNDERWRITERS AT LLOYD'S (Stipulated in the district court to mean EDWARD ALAN HERMITAGE and all other UNDERWRITERS AT LLOYD'S SUBSCRIBING POLICY OF INSURANCE NO. 01/145005 THROUGH MESSRS. ROBT. BRADFORD HOBBS SAVILL, LTD.)

The cross petitioners have no parent companies, subsidiaries or affiliates.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

OPE SHIPPING, LTD.,

Cross Petitioner.

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES
FIDELITY & GUARANTY COMPANIES, INC., VARIOUS
BRITISH UNDERWRITERS AND UNDERWRITERS AT LLOYDS,

Cross Respondents.

VADOR SHIPPING, LTD.,

Cross Petitioner.

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES
FIDELITY & GUARANTY COMPANIES, INC., VARIOUS
BRITISH UNDERWRITERS AND UNDERWRITERS AT LLOYDS,

Cross Respondents.

AGUA SHIPPING, LTD.,

Cross Petitioner.

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES
FIDELITY & GUARANTY COMPANIES, INC., VARIOUS
BRITISH UNDERWRITERS AND UNDERWRITERS AT LLOYDS,

Cross Respondents.

DURAS SHIPPING, LTD.,

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ALLSTATE INSURANCE COMPANY, INC., UNITED STATES
FIDELITY & GUARANTY COMPANIES, INC., VARIOUS
BRITISH UNDERWRITERS AND UNDERWRITERS AT LLOYDS,

Cross Respondents.

CONDITIONAL CROSS PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Cross petitioners ("OWNERS") respectfully pray that this cross petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit be granted if this Court grants the main petition for certiorari filed by petitioners, UNDERWRITERS AT LLOYDS ("WAR RISK INSURERS").

Opinions Below

The opinion of the Second Circuit Court of Appeals is reported as *Ope Shipping, Ltd. v. Allstate Insurance Co., Inc.*, 687 F.2d 639 (2d Cir. 1982) and the opinion of the district court is reported as *Ope Shipping, Ltd. v. All State Insurance Co., Inc.*, 521 F. Supp. 342 (S.D.N.Y. 1981). Both opinions are reproduced in the appendix of the WAR RISK INSURERS' main petition for certiorari as Appendices A and B, pages A1 through A25. There are no other lower court opinions.

Jurisdiction

(i) The court of appeals judgment was dated and entered on August 30, 1982.

(ii) By order dated November 5, 1982, the court of appeals denied the WAR RISK INSURERS' petition for rehearing with suggestion for in banc consideration. By order dated December 14, 1982, the court of appeals denied an application by the WAR RISK INSURERS for permission to file a renewed petition for rehearing with suggestion for in banc consideration. Neither the OWNERS nor the cross/respondent MARINE RISK INSURERS served or filed an application for reheating in the court of ap-

peals. There have been no orders granting or denying any extensions of time in which to petition or cross petition for certiorari.

(iii) This cross petition is filed in reliance on 1980 R. 19.5. The main petition was received by the OWNERS' attorneys on January 14, 1983.

(iv) The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

The Law Involved

This case does not involve any constitutional provisions, treaties, statutes, ordinances or regulations and neither the petition nor the cross petition raise any issues in that respect.

Statement of the Case

This case arises out of four separate actions brought in the United States District Court for the Southern District of New York by the OWNERS and their assignors to recover the stipulated insured value of four commercial ocean going vessels from various marine and war risk underwriters. Jurisdiction of the district court was based upon the admiralty and maritime nature of the claims within the meaning of 28 U.S.C. 1333 and Fed.R. Civ.P. 9(h). The facts of this matter are succinctly stated by Judge Van Graafeiland in the court of appeals decision. [*App. A, pp. A1-A9*].*

Each of the four vessels was covered by policies of marine and war risk insurance. The marine risk policy insured the vessels against, *inter alia*,

[L]oss due to barratry of the master and mariners and other

*References in this cross petition to "App." are to the lettered appendices included as part of the WAR RISK INSURERS' main petition for certiorari.

like perils, but specifically excluded loss resulting from civil war, revolution, rebellion, insurrection or civil strife arising therefrom, hostilities or warlike operations, whether or not there was a declaration of war.

App. A, p. A4.

The war risk policy:

[C]omplemented the marine risk policy by providing coverage for risks excluded from coverage in the latter policy under the "War, Strike and Related Exclusions" clause.

App. A, p. A5.

Since the marine and war risk policies were complementary, the OWNERS commenced suit in the district court maintaining that the losses must be covered by one or the other policy. *See, App. B, pp. A11-A12.* However, the district court dismissed the actions holding that the losses were not covered by either policy. *App. B, pp. A10-A25.* On appeal, the court of appeals affirmed the dismissal of the actions against the MARINE RISK INSURERS but reversed as to the WAR RISK INSURERS. *App. A, pp. A1-A9.*

Reasons for Granting the Cross Petition

While the OWNERS believe that the decision of the court of appeals is correct, there is a substantial body of law that would hold the MARINE RISK INSURERS liable for the losses. We submit that it would be unjust and prejudicial to the OWNERS if this court were to review the court of appeals decision against the WAR RISK INSURERS without also reviewing the dismissal of the complaints against the MARINE RISK INSURERS.

CONCLUSION

If this Court grants the WAR RISK INSURERS' main petition for certiorari, then this cross petition should be granted as well.

Dated: New York, New York
February 7, 1983

Respectfully submitted,

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